

Yellowstone County



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To: Department Heads and Elected Officials
From: Board of County Commissioners
Date: May 5, 2020
Updated: September 15, 2020 underscored
Re: Families First Coronavirus Response Act (FFCRA or Act)

Working from Home

- A. Per Department Head approval, working from home is considered hours worked. Effective May 1, 2020 department heads and elected officials must submit a list of employees working from home to the Board of County Commissioners (Erica Wiley) and Human Resources (Time and Attendance) on the 1st and 16th of each month.

Emergency Paid Sick Leave Act (EPSLA and referred to as Emergency Sick Leave - limited to two weeks 80 hour maximum).

- A. All full time and part time Yellowstone County employees in an active assignment status are eligible for EPSLA unless otherwise excluded. There is no waiting period for EPSLA.

The Families First Coronavirus Response Act (FFCRA) provisions that allow employers of “health care providers” and “emergency responders” to exclude such employees from the FFCRA’s emergency sick leave and expanded FMLA provisions.

To ensure essential services are operational, effective May 1, 2020 Yellowstone County has determined the following emergency responders are not eligible for emergency sick leave or emergency family and medical leave expansion act. All other FMLA requirements still apply.

- Emergency Management personnel
- Sheriff Office employees
- Detention Facility employees
- Youth Services employees
- Information Technology employees
- Facility/Maintenance employees
- Road and Bridge employees
- Other positions on a case by case basis needed to maintain Yellowstone County operations

The one exception to the ineligibility for those designated in the list above as emergency responder, is if an employee is notified by Riverstone Health to quarantine after a positive test result. If a Yellowstone County employee that is in the designated emergency responder group tests positive for Coronavirus (COVID-19) they are eligible for up to 80 hours of emergency sick leave. This update will be retroactive to May 5, 2020.

The Board's thanks go out to all those on the front lines and all Yellowstone County employees.

Under the FFCRA, an employee qualifies for emergency paid sick leave if the employee is unable to work (or unable to telework) due to a need for leave because the employee:

- (1) The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19. *(A shelter in place order does not qualify as a quarantine or isolation order in regard to COVID-19)*
- (2) The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.
- (3) The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.
- (4) The employee is caring for an individual who is subject to a quarantine or isolation order as described in (1), above, or has been advised as described in (2), above.
- (5) The employee is caring for a son or daughter, under age 18, whose school or place of care has been closed, or the childcare provider is unavailable, due to COVID-19 precautions. The definition of a child is the same as defined by FMLA.
- (6) The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.

***Quarantine** separates and restricts the movement of people who were exposed to a contagious disease to see if they become sick. These people may have been exposed to a disease and do not know it, or they may have the disease but do not show symptoms.*

***Isolation** separates sick people with a contagious disease from people who are not sick*

Please Note: If you do not qualify for any of the criteria noted in (1) through (6) above, your absence will be counted as sick leave, vacation leave or leave without pay depending on the circumstances.

Calculation of Pay

For leave reasons (1), (2), or (3): employees taking leave are entitled to pay at either their regular rate or the applicable minimum wage, whichever is higher, up to \$511 per day and \$5,110 in the aggregate (over a 2-week period).

For leave reasons (4) or (6): employees taking leave are entitled to pay at 2/3 their regular rate or 2/3 the applicable minimum wage, whichever is higher, up to \$200 per day and \$2,000 in the aggregate (over a 2-week period).

For leave reason (5): employees taking leave are entitled to pay at 2/3 their regular rate or 2/3 the applicable minimum wage, whichever is higher, up to \$200 per day and \$12,000 in the aggregate (over a 12-week period).

Full-time employees are entitled to two weeks (80 hour max) of emergency paid sick leave and part-time employees are entitled to the typical number of hours that they work in a typical two-week period. There will be a pay code in the time and attendance called emergency sick leave where the hours will be recorded (i.e., similar to regular sick leave or vacation leave).

Emergency Family and Medical Leave Expansion Act

The Act also temporarily amends the Family and Medical Leave Act (FMLA) to provide employees who have been on the job for at least 30 days with the right take up to 12 weeks of job-protected leave for Public Health Emergency Leave.

Under Emergency FMLA, the act expands coverage of FMLA by adding a new qualifying reason:

- (1) Absence from work to care for a child of an employee, if the child's school or place of care has been closed, or the child-care provider is unavailable, due to a public health emergency due to coronavirus as an FMLA event.

To qualify for Emergency FMLA Leave, an employee must be unable to work or telework due to a need to care for the son or daughter under 18 years of age because the child's school or place of care has been closed, or the childcare provider of such son or daughter is unavailable, due to a public health emergency. A "public health emergency" is defined to mean "an emergency with respect to COVID-19 declared by a Federal, State, or local authority." Note that an employee must provide advance notice as soon as practicable of a need for leave under this temporary provision when the need for leave is foreseeable.

Intermittent EFMLA leave may be allowed but needs to be taken in full day increments.

The first ten days of leave may be in the form of Emergency Paid Sick Leave or an employee may choose to substitute accrued vacation leave, personal leave, or other medical/sick leave during this period, but an employer may not require an employee to do so. An employee may also take unpaid leave for the first ten days.

After ten days of leave, employers must continue paid Emergency FMLA, for the care of child under age 18, at a rate of no less than two-thirds of the employee's usual rate of pay. The Act limits the amount of required paid leave to no more than \$200 per day.

Emergency Leave exhausted or first responders excluded from the act.

- (1) May use sick leave, vacation time or comp time depending on the situation
- (2) Leave without pay

Sincerely,

BOARD OF COUNTY COMMISSIONERS
YELLOWSTONE COUNTY, MONTANA

Denis Pitman, Chairman

Donald W. Jones, Member

John Ostlund, Member